IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A.No. 88 /2006 **Single Bench**

Appellant/ Plaintiff : Aghnu, S/o Mukutram Marar, aged about 55 years, Occupation : Cultivator, R/o. Village – Jamunia, P.H.No.28, Tahsil – Kawardha, Present resident of Village - Ghungrikhurd, Tahsil – Kawardha, District – Kawardha.

Versus

Respondents/ Defendants :

1. Dasru, S/o Dhelu Marar, aged about 45 years, R/o. Village - Ghungrikhurd, P.H.No.28, Tahsil – Kawardha, District – Kawardha. (C.G.)

2. Dhelu, S/o Kumutram, aged about 66 years,

3. Dhelku, S/o Kumutram, aged about 64 years,

4. Melku, S/o Kumutram, aged about 62 years, R/o. Village - Ghungrikhurd, P.H.No.28, Tahsil – Kawardha, District – Kawardha.

5. Udasa Bai, W/o Mukutram, aged about 70 years,

6. Kunwaria Bai, W/o Guhra Marar, aged about 52 years, R/o. Nevari, Tahsil – Kawardha, District – Kawardha.

7. Fagni Bai, W/o Bhagvan Marar, aged about 45 years, R/o. Madmada, P.S. Bodla, Tahsil – Kawardha, District – Kabirdham.

8. Setu, S/o Mukutram Marar, aged about 40 years,

9. Methal, S/o Mukutram Marar, aged about 35 years,

Above S.No. 5 to 9 are residents of Village – Baddo, P.S. Bodla, Tahsil – Kawardha, District – Kabirdham.

10. Annadiram, S/o Nanhayya, aged about 28 years,

P.R.No. ..... Presented by Shri ..... dated .....

11. Dhankumar, S/o Nanhayya Marar, aged about 28 years,

S.No. 10 & 11 are Cultivators, R/o. Motipur, near by Baddo, P.S. Bodla, Tahsil – Kawardha, District – Kabirdham.

12. Lasni Bai, W/o Namalum Marar, aged about 24 years, Cultivator, R/o. Post and P.S. Lohartola, Bodla.

13. Jethia Bai, D/o Bahal Marar, aged about 6 years,

14. Setia Bai, D/o Bahal Marar, aged about 3 years,

Both of them are minors and D/o Bahal Marar, R/o. Bhalpahari, P.S. Bodla, Tahsil and District – Kawardha.

15. State of Chhattisgarh, Through Collector, Kawardha.

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE, 1908.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 88/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2-5-2006 Mr. Ashok Patil, learned counsel for the appellant. Heard on admission. The appellant Aghnu has preferred this second appeal under Section 100 of the Code of Civil Procedure, as Civil Appeal No.35-A/2003, preferred by respondent No.1, Dasru against judgment and decree dated 2-9-2003 passed by IInd Civil Judge Class-I, Kawardha in Civil Suit No.37-A/2001, by the impugned judgment and decree dated 25-1-2006, has been allowed and the said civil suit preferred by the appellant Aghnu has been dismissed. The case of the plaintiff – appellant before the Court below was that the suit land ad-measuring 7.62 acres belongs to his ancestors. It was jointly record in the names of Kumutram and his father Mukutram, however, oral partition was effected between them some 45 years prior to the filing of the suit and as per oral partition, 3.81 acres of Khasra No.200 was allotted to the share of his father Mukutram and accordingly they were in possession. Defendants No.2 to 4 sold 2.63 acres of land to Amol, Mardan and Dukhuram vide registered sale-deed dated 23-4-1962. 2 years prior to the filing of the suit, the plaintiff – appellant approached the concerned Halka Patwari for mutation and partition on holding and moved an application for the same, whereupon defendants No.1 to 4 orally objected and during the proceedings before the Additional Tahsildar, Kawardha, a written objection was submitted by defendant No.2, Dhelu	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

22

मामला क्रमांक S-A. No. 88/06 ..... सन् 200

-2-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that the suit land bearing Khasra No.200 area 4.99 acres has been sold by Dhelu, Dhelku, Melku and Late Mukutram to Dasru vide registered sale-deed dated 23-4-1962, and on the basis of the above sale-deed, the land in question was mutated in the name of Dasru vide order dated 30-9-1998. The sale-deed in question is forged and fabricated and does not confer any title to Dasru. It was also pleaded that the suit land was allotted to the share of the appellant's father Mukutram and since his lifetime, they are in possession of the suit property as owner and, therefore, they have perfected their title by adverse possession and with these pleadings, a prayer was sought that the sale-deed dated 23-4-1962, executed by Dhelu, Dhelku, Melku and Late Mukutram, be declared as forged, fabricated, illegal and void and that it does not confer any title upon Dasru and the mutation order in favour of Dasru dated 30-9-1998 be also declared illegal and a decree of perpetual injunction be also passed against Dasru. Defendant No.1, Dasru denied the averments in the plaint and stated that he has purchased the suit land through registered sale-deed on 23-4-1962 from the father and uncles of the plaintiff. The deed was executed by Mukutram voluntarily and since the date of purchase, he is in possession of the suit land and the suit land was lawfully mutated in his name.

Defendants No.2 to 4, in a separate written statement, admitted the execution of the sale-deed dated 23-4-1962 with respect to Khasra No.200 and they also admitted that the sale-deed dated 23-4-1962 was validly and voluntarily executed by Late Mukutram, who put his signature

23

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No.88/06 सन् 200

-3-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

over the sale-deed on 23-4-1962. Defendants No.13 and 14, in their separate written statement, have neither accepted nor denied the averments in the plaint and they have pleaded ignorance regarding the facts mentioned in the plaint.

On the basis of the pleadings of the respective parties, issues were framed by the trial Court and after recording statements of the witnesses, the suit was partly decreed and the plaintiff was declared the owner of 2.49 acres of land of Khasra No.200 and the order of mutation dated 30-9-1998 was declared not binding to the above extent and accordingly a decree of perpetual injunction was passed in favour of the plaintiff and against the defendants to the above extent by recording a finding inter alia that (i) the plaintiff has failed to prove that in the partition, Mukutram obtained 3.81 acres from Khasra No.200 in his share, (ii) Mukutram, after his death, the plaintiff Aghnu and his brother were in possession and the plaintiff has acquired title through adverse possession on 2.49 acres of the suit land, (iii) the plaintiff has not been able to establish that the Khasra No.52, 161, 42 and 181 area 2.63 acres has been sold by defendants No.2 to 4 alone, (iv) it is also not established that Late Mukutram and his legal heirs have sold 4.99 acres to Dasru by registered sale-deed dated 23-4-1962, (v) it has not been established that the sale-deed dated 23-4-1962 executed by Late Mukutram and his legal heirs was forged and fabricated and (vi) it is also not established that the suit is barred by law of limitation.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No. 88/06 **सन् 200**

—4—

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Defendant No.1, Dasru preferred the civil appeal against the above judgment and the learned lower appellate Court, by the impugned judgment and decree, allowed the appeal, set aside the judgment and decree in favour of the plaintiff and dismissed the suit.

Learned counsel for the appellant submits that the original sale-deed dated 23-4-1962, purportedly executed by appellant's father Mukutram, has not been filed by the defendants – respondents. The mutation proceedings were initiated only in the year 1997, i.e., 35 years after the execution of the sale-deed and in the aforesaid circumstances, the trial Court was justified in arriving at the conclusion that the plaintiff has failed to prove the execution of the sale-deed and rightly decreed the suit to the extent of the share of the plaintiff over Khasra No.200 of the suit land. Learned counsel for the appellant proposes the following substantial questions of law : -

(1) "Whether the finding of fact recorded by the trial Court was validly reversed by the lower appellate Court by the impugned judgment?

(2) Whether the plaintiff, by continuous possession of 40 years over the suit land, was entitled for a decree on account of adverse possession?"

In the light of the specific case of the plaintiff/appellant that the sale-deed dated 23-4-1962 was forged and fabricated document, which

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 88/06 सन् 200

-5-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

does not confer any title to defendant No.1, Dasru and the trial Court has recorded a finding against the plaintiff that he has not been able to prove the document to be forged and fabricated, in the opinion of this Court, the appellate Court has correctly held that the finding of the trial Court that defendant No.1, Dasru has not been able to prove the execution of the sale-deed, as he has not filed the original sale-deed, is not justified, particularly when the revenue authorities, on the basis of the said document, have passed an order of mutation in favour of defendant No.1, Dasru in the revenue records. It would be not out of place to mention here that defendants No.2 to 4, who are also the signatories of the sale-deed dated 23-4-1962, have also admitted the execution of the document in their written statement. Thus, the plaintiff has failed to establish his case by adducing positive evidence to establish that the document in question was forged and fabricated and the suit of the plaintiff cannot be decreed only because defendant No.1, Dasru has not filed the original sale-deed, particularly when the sale-deed is more than 30 years old and it was executed in the year 1962 and the certified copy of the same was tendered by the defendants and admitted in evidence by the trial Court and relied upon by the lower appellate Court. It is settled law that the plaintiff has to stand on his own leg and his suit cannot be decreed on the basis of weakness of the defendant.

On the basis of the aforesaid analysis, this Court is of the opinion that the reasoning given by the lower appellate Court for reversing the judgment of the trial Court is based on proper appreciation of evidence

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 88/06 सन् 200

— 6 —

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	available on record, and the finding of fact recorded by the appellate Court does not call for any interference as no substantial question of law, as proposed above by the appellant, is made out for adjudication of this appeal. The appeal, being devoid of merit, is dismissed at the motion stage itself. **Sd/-** **Dhirendra Mishra** **Judge**	

Gopal